

General Information Letter: Credit allowed to trust for replacement taxes paid by beneficiary.

May 8, 1998

Dear:

This is in response to your letter of April 28, 1998. Your letter has been referred to me for reply. In your letter you requested information on behalf of your client. Department rules require that the Department issue only two types of letter rulings, private letter rulings and general information letters. For your general information, we have enclosed a copy of 2 Ill. Adm. Code 1200 regarding letter rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling on behalf of your company, the nature of your question and the information provided require that we respond only with a general information letter. General information letters are designed to provide background information on specific topics. However, general information letters are not rulings that are binding on the Department.

In your letter you have stated the following:

On April 1, 1998 we spoke with xxx xxxxxxxx at the Illinois Department of Revenue regarding the above-named taxpayer. In filing the taxpayer's 1996 Il-1023-C tax return we claimed a credit for replacement tax paid on the 1996 Il-1120-ST. The credit is being claimed because one of the stockholders of the taxpayer is a trust and replacement tax is already being paid on the Il-1120-ST return. To tax the trust as a stockholder on the Il-1023-C would be a double tax. Ms. xxxxxxxx was not able to process the credit because she found no procedures that would allow the processing of the credit.

We are requesting a determination as to how to proceed regarding the credit.

The credit (against income taxes) for replacement taxes paid is found at Section 201(i) of the Illinois Income Tax Act (the "IITA"). Section 201(i) provides for "a credit against the tax imposed by subsections (a) and (b) of this Section for "the tax imposed by subsections (c) and (d) of this section". The tax imposed by IITA Sections 201(a) and (b) is the regular Illinois income tax. S corporations are not subject to tax under IITA Sections 201(a) and (b). However, S corporations are subject to the Personal Property Tax Replacement Income Tax under IITA Section 201(d). Because S corporations are not subject to the tax under IITA Sections 201(a) and (b) the S corporation itself may not utilize the credit for replacement taxes paid. In your letter, you ask us to rule that this credit may be calculated by the S corporation, based upon the S corporation's activities, and that the credit may be passed through to offset the Illinois

income tax liabilities, under IITA Sections 201(a) and (b), of the S corporation trust shareholder.

Based on our examination of the language of the credit for replacement taxes paid, the language of the various other credits from the Illinois Income Tax Act and the history of the enactment of the various other credits under the IITA, we do not believe that we have the statutory authority to issue the letter ruling that you seek. Unlike other credits under the Illinois Income Tax Act, the credit for replacement taxes paid has no language authorizing the pass-through of the credit to S corporation shareholders.

There are certain income tax credits that contain specific statutory language authorizing the pass through of the credits to partners of partnerships and shareholders of S corporations. IITA Section 201(f) establishes the Investment Credit - Enterprise Zones. Originally, this credit did not contain a provision authorizing a pass-through of the credit to partners of partnerships and shareholders of S corporations. However, in P.A. 84-166, effective August 16, 1985, specific language authorizing the pass-through was added to Section 201(f). IITA Section 201(f) provides in relevant part that "for partners and for shareholders of Subchapter S corporations, there shall be allowed a credit under this subsection (f) to be determined in accordance with the determination of income and distributive share of income under Sections 702 and 704 of Subchapter S of the Internal Revenue Code." Similarly, when IITA Section 201(j), the Training Expense Credit, was enacted into law by P.A. 84-1405, effective January 1, 1987, a specific provision was included in the statute to allow the pass-through of the credit to partners of partnerships and S corporation shareholders. In light of the Illinois General Assembly's history of including specific language authorizing the pass-through with respect to certain credits, we have always taken the position that in the absence of such specific language in a particular credit is evidence of the General Assembly's intent to not authorize the pass-through with respect to that credit.

Therefore, in the absence of legislation amending the credit for replacement taxes paid to specifically authorize a pass-through of the credit to shareholders of S corporations we are unable to issue the ruling you seek. The Department would exceed its authority under the Illinois Income Tax Act if it authorized such a pass-through of the credit by letter ruling.

Very truly yours,

Jackson E. Donley
Associate Counsel